

### Remarks

Claims 1-4 and 8-27 were previously pending in the present application. By this amendment the applicants have amended Claims 1, 10, 11, 16, 19, 20, 22, 23 and 27. Claims 12-14, 21 and 24-26 have been canceled without prejudice. The Applicants reserve the right to pursue the canceled claims in a continuation application. Now new matter has been added by the above amendments. Claims 1-4, 8, 10, 11, 15-20, 22, 23 and 27 are now before the Examiner for consideration.

All of the present amendments were made to limit the claims to mutations in the ALS gene to impart herbicide resistance to the plant cell/plants. The ALS gene mutations were part of the subject matter of prior claims 9, 10, 11, 21, 22 and 23 so there is no new matter added. Support for the "herbicide resistance" amendment to Claim 1 as the desired trait is found throughout the Specification where the ALS gene is discussed and therefore this amendment is not new matter either.

The present amendments limiting the claims to mutations in the ALS gene have been made to place the claims in condition for allowance.

### 112 Rejection - Enablement

Claims 1-4, 8, 10, 11, 15-20, 22, 23 and 27 have been rejected under 35 USC 112, 1<sup>st</sup> paragraph for being non-enabling. The present amendments make this rejection moot. All of the presently pending claims are limited to making mutations in the ALS gene which was extensively disclosed in the Specification. In the Examiner's rejection it is even stated that the present application enables localized mutations in the ALS and transgenic GFP genes *in situ* in a plant cell. See page 2 of the Office Action mailed 19 March 2004. Withdrawal of the 112 rejection is respectfully requested.

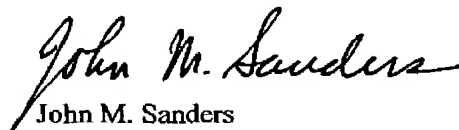
### 102 Rejection

Claims 1 and 16 have been rejected under 35 USC 102(b) as being anticipated by Svab *et al.* The present amendments to these claims make the rejection moot. There is no teaching or suggestion in Svab *et al* to mutate the ALS gene as claimed herein. Withdrawal of the 102(b) rejection of Claims 1 and 16 are respectfully requested.

103 Rejection

Claims 1-4, 8, 10, 11, 15-20, 22, 23 and 27 have been rejected under 35 USC 103(a) as being unpatentable over Kmiec '181 in view of Dunder *et al* and Applicant's own admissions. This rejection is also deemed moot in view of the above amendments limiting the subject matter of the claims to mutations in an ALS gene. Nothing in any of the cited art, alone or combined, would suggest to one of ordinary skill in the art to make mutations to the ALS gene with recombinagenic oligonucleobases according to the claims. Withdrawal of the 103(a) rejection is respectfully requested.

In view of the above amendments and remarks, allowance of this application is now believed to be in order, and Claims 1-4, 8, 10, 11, 15-20, 22, 23 and 27 are specifically requested to issue. If the Examiner has any issues that may be resolved by a telephone interview please call the undersigned.



John M. Sanders

Patent Attorney

Registration No. 30,126

Phone No.: 352-375-8100 or 619-253-5847 (cell)

Fax No.: 352-372-5800

Address: 2421 NW 41<sup>st</sup> Street, Suite A-1  
Gainesville, FL 32606-6669

JS/la

Attachment: